

Appl. No. : 10/085,169  
Filed : February 25, 2002

### REMARKS

In response to the Office Action mailed February 28, 2005, Applicants respectfully request the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following comments. As a result of the amendments listed above, Claims 1-3, 5-8, 11 and 12 remain pending, with Claims 1 and 5 having been amended.

In the changes made by the current amendment, ~~deletions are shown by strikethrough~~, and additions are underlined.

#### Lampropoulos Does Not Anticipate The Independent Claims

Claims 1, 2, 5-7 and 11 presently stand rejected under 35 U.S.C. § 102(b) as being anticipated by Lampropoulos. Claims 3, 8 and 12 presently stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lampropoulos or Lampropoulos in view of Stevens. Applicant respectfully submits that the pending claims are allowable and request reconsideration and withdrawal of the present rejections of these claims.

The Lampropoulos reference discloses a catheter having a plurality of slits (48, for example), which are normally closed to act as one-way valves. In the closed position, the slits function to prevent bodily fluids from entering a lumen of the catheter. *Column 8, lines 11-13*. The slits are configured to open in response to sufficient fluid pressure within the lumen so that a fluid may be delivered from the catheter and into the area of tissue in which the catheter is disposed. *Column 8, lines 18-22*. Thus, the size, or flow area, defined by each slit (and, thus, the collection of slits) is configured to vary from a normally closed position, in the absence of a positive fluid pressure within the catheter lumen, to an open position, in the presence of a predetermined positive pressure within the lumen.

The Examiner has taken the position that the slits of Lampropoulos are non-variable "when they are not varying, for example, when no fluid is going through them." *Page 5 of the Office Action mailed February 28, 2005*. Applicants respectfully disagree. Although, at any specific position, the slits may not be changing in size (i.e., the slits are static), it does not render the slits non-variable. As expressly stated in the Lampropoulos reference, the slits are variable, that is, the slits are specifically configured to move between an open and a closed position in

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response to fluid pressure within the lumen. Thus, the position (and the flow area defined by the slots) is *variable*. Simply because the slits are not in a perpetually dynamic state (i.e., always undergoing a change in position) does not erase the fact that the slits, at all times, are configured to vary in flow area in response to changes in fluid pressure within the catheter.

For at least the reasons presented above, Applicants submit that the present rejection cannot be maintained. Nonetheless, to expedite allowance of the present application, Applicants have amended Claims 1 and 5 to further clarify the structural differences between the presently claimed catheter and the catheter of the Lampropoulos reference. Specifically, Claims 1 and 5 have been amended to recite that the exit slots are normally open. The slits of the Lampropoulos catheter are explicitly disclosed as being normally closed. *Column 8, lines 4-6*. Thus, for at least this reason, the present rejection cannot be maintained. Accordingly, reconsideration and allowance of Claims 1-3, 5-8, 11 and 12 is respectfully requested.

#### CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims and specification. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney, Curtiss C. Dosier at (949) 721-7613 (direct line), to resolve such issue promptly.

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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: AUGUST 26, 2005

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